IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

MFA.No. 646 of 2001()

OPMV.58/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
.....

APPELLANT/PETITIONER:

CHIRUTHA,W/O.KUTTAN,AGED 50 YEARS,KOOTTALAPPADI HOUSE, MALESAMANGALAM POST, THIRUVILWAMALA, THALAPPILLY TALUK, NOW RESIDING AT KOLERITHODY HOUSE, S.R.K.NAGAR, PALAPPURAM POST, OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR
SRI.T.THANKAM

RESPONDENTS/RESPONDENTS:

1.H.KUMAR,S/O.HARIHARA IYER, AGE NOT KNOWN, 106, MUNDANKANNI AMMANKOIL STREET, MYLAPORE, MADRAS, TAMIL NADU.

2.L.VIJAYAM,W/O.THULASI MAIN,AGED 42 YEARS, AKSHAYA, THIRUVILWAMALA, THRISSUR DISTRICT.

3.THE NEW INDIA ASSURANCE CO. LTD., M.G.ROAD, BOMBAY.

BY ADV. SRI.N.S.MOHAMMED USMAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.646 OF 2001 (A)

Dated this the 13th day of November, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant at the age of 48 sustained injuries in a motor accident on 22.5.1997 at about 5.30 p.m. and she suffered serious injuries:

1. Compound comminuted fracture of both bones of right leg lower $^{1}/_{3}^{rd}$;

2. Fracture of lower $^{1}/_{3}^{rd}$ of shaft of femur (R);

3. Dento-alveolar fracture (upper jaw) - intra region of 1st and 2nd incisors of upper jaw;

4. Loss of two teeth from the upper jaw.

Ext.A4 discharge card issued from the Medical College Hospital, Thrissur shows that she has remained in the hospital for treatment for a period of one month. She was treated by the Orthopaedician of the Medical College Hospital and thereafter at Ottapalam Taluk Hospital for another five days. Ext.A8 is the disability certificate. After noticing shortening of the right leg

by one inch and malunited fracture and painful ankle movements, 10% disability was certified. However, compensation was not awarded on a multiplier method. Total compensation awarded was only Rs.59,750/- against a claim of Rs.1,50,000/-. Compensation for the injury was Rs.11,000/- and disability was Rs.15,000/-. Tribunal was of the view that her monthly income as can be taken as Rs.1,000/-. Only quantum of compensation is disputed.

2. It has been settled law that compensation can be calculated on a scientific method and not on a rough and ready basis. Accident occurred in 1997. According to the claimants, she was a coolie, but with regard to wages, there was no evidence. But in 1994, when 2nd schedule was introduced, the notional wages of a non-earning person like a minor was Rs.1,250/- (Rs.15,000/- per year). Considering the fact that she was a coolie and considering the wages of an unskilled coolie labourer, we fix Rs.2,000/- as the monthly income. She was aged 49 years and 13 is the apt multiplier taking guidleline from the 2nd Schedule. Hence compensation payable will be Rs.2,000 x 12 x 13 x $^{10}/_{100}$ =Rs.31,200/-. From that injury compensation of Rs.11,000/- and disability compensation of

Rs.15,000/- has to be deducted and additional compensation payable for disability and loss of earning power will be Rs.5,200/-. Tribunal has awarded loss of actual earning as Rs.5,000/- taking into account that she was under treatment for five months and she was not able to do any work. Taking Rs.1,000/- as the monthly wages, tribunal granted Rs.5,000/-. Since we have taken Rs.2,000/- as the monthly income, she will be entitled to another Rs.5,000/-. Thus additional amount of compensation payable is Rs.10,200/-. The above amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the tribunal. On deposit of the above amount, appellant is allowed to withdraw the amount. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.646 OF 2001()

J U D G M E N T

13th November, 2007